Reports on Australian “terrorism” laws call for streamlined police powers

Mike Head
24 May 2013

Late on budget day last week, Prime Minister Julia Gillard’s Labor government quietly released two official reports on the vast array of “anti-terrorism” laws introduced over the past decade as part of the bogus “war on terrorism”.

The Labor government sat on both reports for weeks. One, from the “Independent National Security Legislation Monitor” was submitted to Gillard on December 20. The other, by the Council of Australian Governments (COAG), was handed to the prime minister on March 1.

The timing of their release indicates that it was designed to bury the documents amid the blanket media coverage of the budget. The government clearly wants to avoid public scrutiny of plans to strengthen the laws, more than 12 years after they were first introduced in 2001.

The “war on terrorism” was launched on the pretext of responding to the 9/11 terrorist attacks in the US. But in Australia, as in the US and Britain, it immediately became a vehicle for the eruption of US-led militarism, starting with the invasions of Afghanistan and Iraq, and for a barrage of domestic police-state measures.

From the outset, the WSWS warned that the “anti-terrorism” laws had nothing to do with protecting ordinary people from terrorism. Fundamental legal and democratic rights were being trashed in order to deal with political and social unrest at home.

The legislation defined terrorism in sweeping terms that could cover many forms of political dissent, expanded the already far-reaching surveillance powers of the Australian Security Intelligence Organisation (ASIO) and other security forces, and overturned core legal principles, such as habeas corpus (no detention without trial), the right to remain silent and the presumption of innocence.

In an unprecedented development, ASIO was handed the power to secretly interrogate anyone suspected of having information “relating to” terrorism. Those questioned could “disappear”—not even permitted to tell their families, let alone the media or the public, that they had been detained. The police were also given “investigation” arrest powers to detain people, without charge, for prolonged questioning, and semi-secret terrorist trials could be conducted behind closed doors.

After backing these measures when they were pushed through by the previous Howard Liberal government, Labor came to office in 2007 pledging to “restore confidence” in them, following public outrage over their use in the detention of an innocent Indian-born doctor, Mohamed Haneef, the unlawful police coercion of a Muslim medical student, Izhar ul-Haque, and Canberra’s support for the incarceration of Australian citizen David Hicks at Guantánamo Bay.

In 2009, the Labor government unveiled a bill to appoint a monitor to review the legislation. Based on a similar British model, the move was designed to head off demands for the abolition of the draconian powers. Bret Walker, a Sydney barrister, was eventually appointed as a part-time monitor in 2011. This is his first substantive report.

The COAG review is also long-overdue. It was meant to occur in 2010, five years after a second wave of federal and state laws was rammed through in 2005, when the Howard government suddenly declared a still-unexplained “urgent” security situation. These measures included two new types of detention—control orders and preventative detention—and the outlawing of organisations by executive decree. One crucial amendment altered the wording of all terrorist offences from “the” to “a” terrorist act, thus permitting convictions without any evidence of a specific plot, let alone any actual terrorist attack.

Gillard did not initiate the COAG report until August 2012, when she organised a panel of trusted members of the legal and security establishment—retired judges, senior police officers, a prosecutor and an ombudsman—to prepare it.

The mainstream media, which has been complicit in the "war on terrorism" from the outset, depicted the two reports as steps toward softening the laws. The Australian ABC reported: "The definition of a terrorist act should be tightened and ASIO's powers reduced to maintain civil liberties, reviews of counter-terrorism law have found."

Nothing could be further from the truth. While the reports recommend abolition of preventative detention orders (PDOs)—which the police found unusable—they call for stronger detention powers for ASIO and a wider definition of terrorism.

Both reports say PDOs, which permit detention without charge for up to 14 days, are worthless because no interrogation is permitted of detainees. "The inability to question a person detained under a PDO for law enforcement of intelligence purposes renders them useless as an investigative tool," Monitor Walker notes. According to the COAG panel: "One common theme, inherent in the police response at both state and federal level, is the operationally unsatisfactory situation arising from the inability to interrogate a detained person."

Almost as an afterthought, the COAG report notes that PDOs might be unconstitutional and infringe human rights legislation.

The reports add that ASIO and the police have alternative means of detention, such as police "investigation" arrests of the type used against Haneef—which can last for eight days—and ASIO's secret questioning warrants—which can extend for seven days. To remove any doubt, Walker advocates specifying that ASIO can swiftly detain people under its questioning warrants.

Walker further proposes removing an "excessive safeguard" on ASIO questioning—a stipulation that it be a "last resort" when other methods of intelligence gathering "would be ineffective." This would permit ASIO to obtain, and enforce, questioning warrants even more readily, without having to go through the motions of seeking information by other means.

Likewise, Walker suggests abolishing "control orders"—a form of house arrest used against Hicks and Thomas. The monitor says their use could hinder surveillance and other intelligence-gathering. The COAG panel insists on retaining control orders, but with "security-cleared" lawyers participating in the closed-door application hearings. In other words, it wants lawyers to be politically vetted.

Both reports recommend extending the terrorism definition to specifically cover hostage-taking, hoaxes and threatening to do psychological harm. Walker urges the deletion of the requirement to prove a "political, religious or ideological" motive, thus making it easier to secure convictions. He describes it as an "unnecessary burden" on police and prosecuting authorities.

The COAG report supports outlawing organisations for "advocating" terrorism, even "indirectly", but not banning them for "praising" terrorism, because that would undermine the political legitimacy of the laws. This provision could "cast something of an Orwellian blanket over free and democratic discussion of matters of intense public interest."

Likewise, the COAG panel warns that criminalising "associating" with a "terrorist organisation" has the potential to affect, and offend, "large sections of the community without any clear justification."

The COAG report suggests insulating members of the Australian armed forces from prosecutions for acts performed during their service. That is an implicit admission that Australian military operations, both domestically and overseas, may involve criminal violence against civilians.

In releasing the reports, Attorney-General Mark Dreyfus exploited the recent Boston bombings, whose circumstances remain murky, to rule out any relaxation of the terror powers. "It is clear that it is as important now as it ever was to maintain strong capabilities in the fight against terrorism," he declared.

Dreyfus refused to say when the government would respond to the reports, and specifically declined to commit to doing so before the scheduled September 14 federal election. George Brandis, the Liberal-National Party's shadow attorney-general, said he agreed with Dreyfus on "looking very carefully" at the reports—underscoring the bipartisan consensus on suppressing any wider discussion on strengthening the arsenal of "anti-terror" laws until the election is out of the way.